



## Association of Personal Injury Lawyers

### Briefing: Civil Liability Bill – House of Commons report stage – October 2018

#### About APIL

The Association of Personal Injury Lawyers (APIL) is a not-for-profit organisation which has worked for almost 30 years to help injured people gain the access to justice they need, and to which they are entitled. We have more than 3,300 members who are committed to supporting the association's aims, and all are signed up to APIL's code of conduct and consumer charter. Membership comprises mostly solicitors, along with barristers, legal executives, paralegals and some academics.

#### Amendments to remove clauses 3, 4 and 5

APIL supports amendments 2, 3 and 4 which will remove clauses 3, 4 and 5 from the Civil Liability Bill. We urge MPs to vote in favour of the amendments.

Upon taking office, the Lord Chancellor has to swear an oath in which he says he will “defend the independence of the judiciary”<sup>1</sup>. These clauses in the Civil Liability Bill seriously undermine that oath. Instead of defending the independence of the judicial process, the Lord Chancellor is sending a clear message to the judiciary that he no longer trusts the ability of the judiciary and the court system to decide fairly what is due in compensation to injured people. Compensation based on years of legal precedent is relegated simply to the award of an amount from an arbitrary tariff.

It is quite a feat for the Government to introduce a Bill which undermines judicial independence and precedent, as well as attacking the rights of injured people. Those who have been injured through no fault of their own will take the biggest hit to their rights in recent memory. Any concept of fairness or compassion or help for genuinely injured people has been sacrificed in what the Government has openly called ‘a Bill to cut insurance premiums’.

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<sup>1</sup> Section 17, Constitutional Reform Act 2005

The payment of fair damages for pain and suffering is an important acknowledgement that the injury inflicted was needless. It can help to atone for the negligence which caused the injury, and it holds the wrongdoer to account. The most devastating aspect of any car crash is not damage to the vehicle, but personal injury and the very purpose of insurance is to provide recompense for that.

A similar injury can produce very different effects on, for example, a young mother nursing a baby, a professional fitness instructor, or someone who suffers a complete loss of confidence as a result of the injury and the incident that caused it. This is more likely to apply to those who are already vulnerable, such as elderly people. To remove judicial discretion from awards will inevitably lead to under-compensation in many circumstances. Tariffs are appropriate for mobile phone contracts and taxi fares, not injured people.

In most cases where the symptoms last up to three months, the Government's proposed compensation of £235 will not be anywhere near an appropriate level of compensation. A train passenger can receive up to £493 if his train from London to Glasgow is delayed by two hours. A train delayed by two hours is an inconvenience, but it is nothing compared to three months of pain, three months of sleepless nights, or three months of not being able to look after a young child properly.

During report stage in the House of Lords, former Lord Chief Justice Lord Woolf said that the proposed tariff "offends an important principle of justice, because it reduces the damages that will be received by an honest litigant because of the activities of dishonest litigants"<sup>2</sup>. We support these comments.

In the Government's response to the House of Lords Delegated Powers and Regulatory Reform Committee, Lord Keen attempted to defend the Government's decision to introduce a tariff. According to Lord Keen, a tariff is "consistent with other areas where the Government already controls and sets the rates of damages"<sup>3</sup>. Lord Keen cited the Criminal Injuries Compensation Scheme (CICS) as an example. It is an irrelevant comparison. The CICS is administrated by the Criminal Injuries Compensation Authority, an executive agency of the Ministry of Justice, and is funded solely by the taxpayer. The very purpose is to compensate victims of the worst violent crimes, who otherwise would have no one else to pay compensation.

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<sup>2</sup> Civil Liability Bill report stage, House of Lords, 12 June, column 1594,  
[https://hansard.parliament.uk/lords/2018-06-12/debates/BAD8CBC4-5E52-48F1-93D8-6992453ABFFB/CivilLiabilityBill\(HL\)](https://hansard.parliament.uk/lords/2018-06-12/debates/BAD8CBC4-5E52-48F1-93D8-6992453ABFFB/CivilLiabilityBill(HL))

<sup>3</sup> <https://publications.parliament.uk/pa/ld201719/ldselect/lddelreg/152/15204.htm>

The CICS is funded from public money, and the Government has a duty to the taxpayer. The Government does not, and should not, have a duty to protect the profits of private insurance companies, and introduce tariffs which will protect negligent people from paying full and fair compensation. There is no precedent for this.

These amendments will protect the independence of the judiciary and the court system and defend the rights of injured people. In the long-running debate on this issue, there appears to be little recognition about the needs of injured people. Instead of doing what is right for injured people, ministers continue to see injured people as an easy target.

Members of the House of Commons should support amendments 2, 3 and 4 to remove clauses 3, 4 and 5 from the Bill. Rights for injured people, and an independent judicial system, are hallmarks of a civilised society, and should be protected.

### **Personal injury small claims limit**

At the same time as restricting compensation for whiplash, the Government is proposing to increase the small claims limit to £5,000 for road traffic accident personal injury claims, and £2,000 for all other personal injury claims. Together they form part of what the Government refers to as the “final package of measures” to “reduce the volume and value of minor, exaggerated and fraudulent soft tissue claims”<sup>4</sup>.

Claims under £5,000 are not minor, and an increase in the small claims limit will cover far more than soft tissue injuries. These claims could include a brain or head injury, injuries to the eyes, a collapsed lung, or fractured cheekbones. This is a disproportionate response to a stated aim of dealing with whiplash claims.

Outside the small claims court a ‘polluter pays’ system operates in personal injury cases, which means that if the defendant who has caused the injury loses his case he pays the claimant’s legal fees in the main (some of the cost is borne by the claimant). But in the small claims court the injured claimant cannot recover his costs from the wrongdoer, even if the claimant wins the case.

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<sup>4</sup> Reforming the Soft Tissue Injury ('whiplash') Claims Process impact assessment  
<https://publications.parliament.uk/pa/bills/bill/2017-2019/0090/whiplash-IA.pdf> page 5

Under the small claims proposals injured people will face a very difficult choice. They will either have to represent themselves without any legal help, leaving them vulnerable against defendants who are almost always represented by lawyers; seek legal advice from a solicitor, meaning they will have to sacrifice part of their compensation to pay for legal advice; or abandon the claim altogether, meaning they will receive no justice, and the person whose negligence caused the injury will get away scot-free.

APIL recognises that the small claims limit for personal injury has not been increased for many years and therefore we accept the argument that an increase to reflect the rate of inflation could be justified. This is also the opinion of the House of Commons Justice Select Committee. In May this year the committee concluded that “small claims limit for PI should be increased to reflect inflation”, and recommended a limit of £1,500<sup>5</sup>.

APIL support's a proposed limit of £1,500, and we ask MPs to support attempts to restrict any increase in the small claims limit.

For further information please contact:

Sam Ellis  
Parliamentary Officer, APIL  
Email: sam.ellis@apil.org.uk  
Tel: 0115 943 5426

Lorraine Gwinnutt  
Head of Public Affairs, APIL  
Email: lorraine.gwinnutt@apil.org.uk  
Tel: 0115 943 5404

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<sup>5</sup> House of Commons Justice Select Committee, Small claims for personal injury, Seventh Report of Session 2017-2019, page 54